S.B. CIVIL WRIT PETITION NO.773/2007.

Pema and ors.
Vs.
Board of Revenue and ors.

Date of order : 17/4/2007.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri Vimal Kumar Jain for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners have challenged the order passed by the Board of Revenue dated 18/8/2006 and the revenue appellate authority dated 4/2/2005 whereby the order passed by the S.D.O. on 3/12/2004 rejecting the application of the respondent-defendant for setting aside the order dated 25/9/2001 whereby ex-parte decree was passed against them was reversed. The petitioners had filed a suit for declaration and permanent injunction in the court of S.D.O. Sambharlake on 4/5/2001. The suit was decreed ex-parte against the

respondent who was defendant in that suit on 25/9/2001. The S.D.O. treated the notice having been duly served on the respondent-defendant. The revenue appellate authority in appeal filed by the respondent found that notices were issued to the defendant for appearance on 4/5/2001 but on perusal of the said order, it appears that the report for issuance of notice was made on 24/5/2001 and still thereafter on 22/9/2001 the ex-parte proceedings were initiated against the defendant. The suit was decreed on 1/5/2002 and it was thereafter that the application for setting ex-parte decree was rejected on 3/12/2004. The learned revenue appellate authority found that while notices were issued on 23/7/2001 but in those notices the date for appearance of the defendant was indicated as 27/8/2001. When the notices were served, thumb impression of the defendant was shown to have been obtained on this summon and the notices were

received back on 27/7/2001 with the report of the process server. The learned revenue appellate authority therefore came to the prima-facie conclusion that the service and receipt of notices within two days does not appear to be in order and on that basis, decided to set-aside the ex-parte decree. The Board of Revenue also refused to interfere the matter and therefore upheld the order passed by the revenue appellate authority.

I have heard learned counsel for the petitioners and perused the aforesaid two judgments.

All that has happened by setting aside the ex-parte decree is that the defendants would now have the opportunity to contest the matter on merits and the revenue suit would now result into passing of a judgment based on context of both the parties.

I do not find that any of the orders passed by

the Board of Revenue and the Revenue Appellate Authority suffers from any such legal error warranting interference by this Court.

Accordingly, this writ petition being devoid of merit and substance is dismissed summarily.

**(MOHAMMAD RAFIQ), J.**

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